IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1307 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPTIBEN M PATEL

Versus

DIRECTOR OF PRIMARY EDUCATION

Appearance:

1. Special Civil Application No. 1307 of 1989

NOTICE SERVED for Petitioner No. 1

..... for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 14/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order dated 17/01/89 passed by respondent no.2 herein at

Annexure 'A' to the petition, whereby, the service of the petitioner was terminated on the ground that the petitioner had not attained 18 years of age as on 01/07/89.

2.0 The brief facts of the case are that respondent no.2 had invited applications for the posts of Primary Teachers through public advertisement dated 09/12/87 in the daily - Gujarat Samachar. The petitioner applied for the said post and was selected.

2.1 It is the case of the petitioner that she fulfilled all the requirements of the Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules, 1970. But her services came to be terminated on the ground that she had not attained the age of 18 years as on 01/07/87, as per the terms of the advertisement. Hence, this petition. Though served, none appears for the respondents.

2.2 By order dated 27/03/89, the matter was admitted as L.P.A.No.82/1989 involving identical question was admitted. The matter was ordered to be placed for hearing along with the aforesaid L.P.A.. In Civil Application No.544/1989 in S.C.A.No.1307/1989, a Division Bench of this Court had granted interim relief in terms of para 10(C) of S.C.A.No.1307/1989 by which the Court had suspended the implementation of the order dated 17/01/89.

3.1 Mr. Dave for the petitioner has stated that the date of birth of the petitioner is 14/11/69 and the petitioner applied for the said post as per the advertisement dated 09/12/87. The last date for the receipt of the applications was 28/12/87 and Interviews for the said posts were held in June 1988. He has, therefore, submitted that the petitioner had completed 18 years of age on the date of advertisement as well as on the date of Interview.

3.2 Mr.Dave for the petitioner has further submitted that the petitioner is working with the respondent since the last fifteen years and is at present working with the respondent at Amlai, Taluka Modasa. He has also relied upon an unreported decision of this Court in S.C.A.No.1828/1988 and S.C.A.No.639/1988 wherein the provisions of Rule 4 of the Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules 1970 have been lucidly interpreted.

4.1 After going through the averments made in the

petition and after hearing the learned advocates for the parties, I am of the opinion that the petitioner had completed 18 years of age as on 01/07/88. The petitioner was not even given an opportunity of being heard before passing the impugned order of termination. Moreover, considering the fact that the respondent had also issued an advertisement at Annexure 'G' dated 14/09/88, accepting the decision of this Court, the termination order of the petitioner is required to be quashed and set aside.

5.1 For the foregoing reasons, this petition is allowed. The order of termination dated 17/01/89 passed by respondent no.2 herein at Annexure 'A' to the petition is quashed and set aside. The petitioner is ordered to be treated as continuous in service. Rule is made absolute accordingly with no orders as to costs.

(K. S. Jhaveri, J.)

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